

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ERIC REIBER, et al.,

Plaintiffs,

v.

CITY OF PULLMAN, et al.,

Defendants.

NO: 11-CV-0129-TOR

ORDER DENYING PLAINTIFFS'
MOTION FOR SUBSTITUTION
WITH LEAVE TO RENEW

BEFORE THE COURT is Plaintiffs' Motion to Substitute the Estate of Patrick Wilkins as a party for Defendant Patrick Wilkins (ECF No. 108). This matter was heard without oral argument on February 15, 2013. The Court has reviewed the briefing and the record and files herein, and is fully informed.

DISCUSSION

Plaintiffs seek to substitute the Estate of Patrick Wilkins as a party for Defendant Patrick Wilkins, who passed away on November 16, 2012. Motions for substitution are governed by Federal Rule of Civil Procedure 25. Under Rule 25(a), a court may substitute a proper party in interest for a deceased party whose

1 death has been noted on the record, provided that the party seeking substitution has
2 served (1) its motion to substitute, and (2) a statement noting the death on the
3 record, upon the existing parties and the non-party to be substituted. Fed. R. Civ.
4 P. 25(a)(3). *See Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994) (explaining
5 that motion to substitute and suggestion of death must be served upon non-party
6 successors or representatives of the deceased party “in the manner provided by
7 Rule 4 for service of a summons”).

8 Here, Plaintiffs filed a suggestion of death of Defendant Patrick Wilkins and
9 a motion to substitute the Estate of Patrick Wilkins in his stead on January 17,
10 2013. ECF Nos. 108, 111. However, the record does not reflect that these two
11 documents were ever served upon the Estate of Patrick Wilkins. Although
12 Plaintiffs’ appear to have served *summonses* on both the attorney for the Estate and
13 the personal representative of the Estate, (ECF No. 120), the returns of service do
14 not indicate which documents (if any) were attached to the summonses. In the
15 absence of proof that Plaintiffs’ suggestion of death and motion to substitute have
16 been properly served, the Court cannot order substitution under Rule 25(a).
17 *Barlow*, 39 F.3d at 233-34. Accordingly, Plaintiffs’ motion to substitute is denied
18 with leave to renew.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 Plaintiffs' Motion to Substitute the Estate of Patrick Wilkins as a party for
3 Defendant Patrick Wilkins (ECF No. 108) is **DENIED** with leave to renew.

4 The District Court Executive is hereby directed to enter this Order and
5 provide copies to counsel.

6 **DATED** this 20th day of February, 2013.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge